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IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 01..02..2006

CORAM

THE HON'BLE MR. AJIT PRAKASH SHAH, CHIEF JUSTICE
and
THE HON'BLE MRS. JUSTICE PRABHA SRIDEVAN

Writ Appeal Nos.11 to 13 & 73 of 2006
and
W.P.Nos.26176, 26177, 26178 and 26179 of 2005
and
W.A.M.P.Nos.35 to 37 & 144 of 2006

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1. Indian Overseas Bank,
   rep. by its Deputy General Manager,
   Inquiry Cell, Industrial Relations Department,
   No.763, Anna Salai, Chennai - 600 002.
2. S.Venkatraman,
   Enquiry Officer,
   Indian Overseas Bank Inquiry Cell,
   Industrial Relations Department,
   No.763, Anna Salai, Chennai - 2.

.. Appellants in all the Writ Appeals & Respondents 1and 2 in all the Writ Petitions.

Vs.

1. P.Ganesan ..1st Respondent in W.A.No.11/2006 & Petitioner in W.P.No.26176/2005

2. S.Vijayakumar ..1st Respondent in W.A.No.12/2006 & Petitioner in W.P.No.26177/2005

3. R.Amalraj ..1st Respondent in W.A.No.13/2006 & Petitioner in W.P.No.26179/2005

4. A.Dakshinamoorthy ..1st Respondent in W.A.No.73/2006 & Petitioner in W.P.No.26178/2005

5. Mr.L.Balasubramaniam
   C/o. All India Overseas Bank Employees
   Trade Union, No.763, Anna Salai,
   Chennai - 2. ..2nd Respondent in all the Writ Appeals & 3rd respondent in all the Writ Petitions.

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PRAYER: Writ Appeals filed against the interim orders passed in W.P.M.P.Nos.28627, 28628, 28630, and 28629 of 2005 and W.V.M.P.Nos.2047, 2049, 2048 and 2050 of 2005 in W.P.Nos.26176, 26177, 26179 and 26178 of 2005

Presented under Article 226 of the constitution of India to issue Writ of Mandamus directing the I Respondent Bank to defer the disciplinary proceedings with regard to the chargesheet dated 21.2.2005 issued to the respective petitioner until the completion of Criminal trial in respect of Crime.No.162-163/05 on the file of F-4, Thousand lights Police Station, Chennai.

A.L.Somayaji, Senior Cousnel For M/s.Aiyar & Dolia :: For Appellants in Writ Appeals & For Respondents 1 & 2 in all the Writ Petitions.

Mr.V.Prakash, Senior Counsel For Mr.P.Chandrasekaran :: For Respondents 1 to 4 in Writ Appeals & Petitioners in all the Writ Petitions.

Mr.C.R. Chandrasekaran :: R2 in all WA
R3 in all WPs

J U D G M E N T

THE HON'BLE THE CHIEF JUSTICE

Heard learned Senior Counsel for the parties, and by consent of the parties Writ Appeals as well as Writ Petitions are taken up for final hearing.

2. These writ petitions are filed challenging the action of the respondent-bank in proceeding with the domestic enquiry with regard to the charge-sheet dated 21.02.2005, while criminal case on the same set of allegation is pending against the writ petitioners.

3. The following facts lead to the filing of these writ petitions:

The writ petitioners are the office-bearers of the Indian overseas Bank Scheduled Caste/Scheduled Tribe Employees' Welfare Association. The association is registered under the Tamil Nadu Societies Registration Act, 1975. It is the case of the petitioners that one Mr.A.Krishnan, who was also an office-bearer of their association, floated another association and named it as All India Overseas Bank Schedule Caste and Schedule Tribe Employees Welfare Association. The registration under similar name was the subject matter of challenge before the High Court in W.P.No.10030 of 2001 and this Court vide its Judgment and Order dated 23.01.2004 allowed the petition declaring the registration of the association with the same name resembling the petitioners' association as illegal. It is the further case of the petitioners that one Mr.L.Balasubramaniam, President All India Overseas Bank Employees Association, who is impleaded in the writ petitions as 3rd respondent and Mr.A.Krishnan, started to interfere with the activities of the writ petitioners' association. According to the petitioners on 27.01.2005 at

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about 12.30 pm when the General Secretary of the petitioners' association went to the central office of the bank to discuss about the welfare measures to be taken for the Scheduled Caste and Scheduled Tribe employees of the bank, he and his associates were abused by caste and physically assaulted by Mr.L.Balasubramaniam and some other persons. As a result the General Secretary and the other office-bearers of the petitioners' association received injuries and were admitted in the General Hospital. It is alleged by the petitioners that Mr.L.Balasubramaniam having attacked them got himself admitted in National Hospital, a private hospital, and lodged a private complaint. The General Secretary of the petitioners' association also lodged a complaint on 27.01.2005 at about 19.15 hours against Mr.L.Balasubramaniam before the F4-Thousand Lights Police Station, Chennai under Sections 341 and 323 of IPC read with Section 3(1) of the Schedule Caste and Scheduled Tribe (Prevention of Atrocities) Act, 1989, and the same has been registered as Crime No.163 of 2005, and a charge sheet has also been filed before the XIV Metropolitan Magistrate, Egmore, Chennai. It is stated that Mr.L.Balasubramaniam had also lodged a complaint against the office-bearers of the petitioners' association and the complaint was registered in the same police station under Crime No.162 of 2005 under Sections 341, 323, 324, 427, 307 and 507(II) of the Indian Penal Code, and a charge sheet has also been filed in that case before the XIV Metropolitan Magistrate, Egmore, Chennai. Both the criminal cases are pending. The grievance of the petitioners is that the respondent-bank without conducting any preliminary investigation, straightaway issued a statement of imputation and started domestic enquiry against the petitioners alleging that the petitioners had indulged in unruly, riotous behaviour, and allegedly committed willful act of criminal assault on Mr.L.Balasubramnaiam. The statement of imputation is solely based on the criminal complaint lodged by Mr.L.Balasubramaniam. The petitioners contend that inasmuch as the criminal case against the petitioners is pending, and the disciplinary proceedings are founded on the same set of allegations, petitioners will suffer undue hardship if disciplinary proceedings are allowed to proceed especially when Mr.L.Balasubramaniam is also facing the charge with regard to the same incident before the criminal court. The petitioners have therefore filed the above writ petitions seeking a direction against the 1st respondent-bank to defer the disciplinary proceedings with regard to the charge sheet dated 21.02.2005 issued to the petitioners until the completion of criminal trial in respect of Crime Nos.162-163 of 2005 on the file of F-4, Thousand Lights Police Station, Chennai.

4. Mr.V.Prakash, learned Senior Counsel appearing for the petitioners submitted that the bank has initiated the disciplinary proceedings solely on the basis of the criminal complaint lodged by the President of the rival union. According to him as the criminal case against the petitioners is pending and the disciplinary proceedings are founded on the same set of allegations, the petitioners will be seriously prejudiced, if the disciplinary proceedings are allowed to proceed, particularly, when the President of the rival union is also facing the charge with regard to the same incident before the criminal court. Further, according to him, in the facts and circumstances of the case, it would not be desirable or proper to proceed simultaneously with the criminal proceedings as well as the disciplinary proceedings.

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5. Per contra, Mr.A.L.Somayaji, learned Senior Counsel appearing for the respondent-bank submitted that in law there is no bar to or prohibition against initiating simultaneous criminal proceedings and disciplinary proceedings. The purpose of the departmental enquiry and of prosecution is two different and distinct aspects. The crime is an act of commission in violation of law or omission of public duty. The departmental enquiry is to maintain discipline and efficiency in public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible.

6. In Delhi Cloth and General Mills Ltd. Vs. Kushal Bhan, 1960 (1) LLJ 520 (SC), it was held that the principles of natural justice do not require that the employer should wait for the decision of the criminal court before taking disciplinary action against the employee. At the same time, the Court observed:

> 'We may, however, add that if the case is of a grave nature or involves questions of fact or law, which are not simple, it would be advisable for the employer to wait the decision of the trial court, so that the defence of the employee in the criminal case may not be prejudiced'.

7. In Tata Oil Mills Co. Ltd. Vs. Workmen, 1964 (II) LLJ 113 (SC), following Delhi Cloth and General Mills Ltd. Case (supra) it was observed that,

> "it is desirable that if the incident giving rise to a charge framed against a workman in a domestic enquiry is being tried in a criminal court, the employer should stay the domestic enquiry pending the final disposal of the criminal case. It would be particularly appropriate to adopt such a course where the charge against the workman is of a grave character, because in such a case, it would be unfair to compel the workman to disclose the defence, which he may take before the criminal court. But to say that domestic enquiries may be stayed pending criminal trial is very different from saying that if an employer proceeds with the domestic enquiry in spite of the fact that the criminal trial is pending, the enquiry for that reason alone is vitiated and the conclusion reached in such an enquiry is either bad in law or mala fide.

8. In Jang Bahadur Singh Vs. Baij Nath Tiwari, 1969 (1) LLJ 567 (SC) the contention that initiation of disciplinary proceedings during the pendency of criminal proceedings on the same facts amounts to contempt of court was rejected by the Supreme Court.

9. After considering the ratio of the above three decisions vide, Delhi Cloth and General Mills Ltd. Case, Tata Oil Mills Co. Ltd. Case and Jang Bahadur Singh case (supra) the Supreme Court in Kusheshwar Dubey Vs. Bharat Coking Coal Ltd., 1988 (2) LLJ 470 observed:

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"The view expressed in the three cases of this court seems to support the position that while there could be no legal bar for simultaneous being taken, yet, thee may be cases where it would be appropriate to defer disciplinary proceedings awaiting disposal of the criminal case. In the latter class of cases it would be open to the delinquent employee to seek such an order of stay or injunction from the court. Whether in the facts and circumstances of a particular case there should or should not be such simultaneity of the proceedings would then receive judicial consideration and the court will decide in the given circumstances of a particular case as to whether the disciplinary proceedings should be interdicted, pending criminal trial. As we have already stated that it is neither possible nor advisable to evolve a hard and fast, straightjacket formula valid for all cases and of general application without regard to the particularities of the individual situation. For the disposal of the present case, we do not think it is necessary to say anything more, particularly when we do not intend to lay down any general guideline.

In the instant case, the criminal action and the disciplinary proceedings are grounded upon the same set of facts. We are of the view that the disciplinary proceedings should have been stayed and the High Court was not right in interfering with the trial court's order of injunction which had been affirmed in appeal" (emphasis supplied).

10. In State of Rajasthan Vs. B.K.Meena & Others, 1997 (1) LLJ 746 a two Judge Bench of the Supreme Court observed:-

"It would be evident from the above decisions that each of them starts with the indisputable proposition that there is no legal bar for both proceedings to go on simultaneously and then say that in certain situations, it may not be 'desirable', 'advisable' or 'appropriate' to proceed with the disciplinary enquiry when a criminal case is pending on identical charges. The staying of disciplinary proceedings, it is emphasised, is a matter to be determined having regard to the facts and circumstances of a given case and that no hard and fast rules can be enunciated in that behalf. The only ground suggested in the above decisions as constituting a valid ground for staying the disciplinary proceedings is that 'the defence' of the employee in the criminal case may not be prejudiced. This ground has, however, been hedged in by providing further that this may be done in cases of grave nature involving questions of fact and law. In our respectful opinion, it means that not only the charges must be grave but that the case must involve complicated questions of law and fact. Moreover, 'advisability', 'desirability' or 'propriety' as the case may be, has to

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be determined in each case taking into consideration all the facts and circumstances of the case. The ground indicated in D.C.M. and Tata Oil Mills (supra) is also not an invariable rule. It is only a factor which will go into the scales while judging the advisability or desirability of staying the disciplinary proceedings. One of the contending considerations is that the disciplinary enquiry cannot be and should not be delayed unduly……While it is not possible to enumerate the various factors, for and against the stay of disciplinary proceedings, we found it necessary to emphasise some of the important considerations in view of the fact that very often the disciplinary proceedings are being stayed for long periods pending criminal proceedings. Stay of disciplinary proceedings cannot be, and should not be, a matter of course. All the relevant factors, for and against, should be weighed and a decision taken keeping in view the various principles laid down in the decisions referred to above (emphasis supplied).

11. In Capt. M.Paul Anthony Vs. Bharat Gold Mines Ltd., AIR 1999 SC 1416 the Supreme Court indicated some of the fact situations which would govern the question whether departmental proceedings should be kept in abeyance during the pendency of a criminal case. In paragraph – 22 of the said decision, conclusions which are deducible from various decisions were summarised. They are as follows:

(i) Departmental proceedings and proceedings in a criminal case can proceed simultaneously as there is no bar in their being conducted simultaneously, though separately.

(ii) If the departmental proceedings and the criminal case are based on identical and similar set of facts and the charge in the criminal case against the delinquent employee is of a grave nature which involves complicated questions of law and fact, it would be desirable to stay the departmental proceedings till the conclusion of the criminal case.

(iii) Whether the nature of a charge in a criminal case is grave and whether complicated questions of fact and law are involved in that case, will depend upon the nature of offence, the nature of the case launched against the employee on the basis of evidence and material collected against him during investigation or as reflected in the charge – sheet.

(iv) The factors mentioned at (ii) and (iii) above couldn't be considered in isolation to stay the departmental proceedings but due regard has to be given to the fact that the departmental proceedings cannot be unduly delayed.

(v) If the criminal case does not proceed or its disposal is being unduly delayed, the departmental proceedings, even if they were stayed on account of the pendency of the criminal case, can be resumed and proceeded with so as to conclude

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them at an early date, so that if the employee is found not guilty his honour may be vindicated and in case he is found guilty, the administration may get rid of him at the earliest.

12. The question as to whether there is any prohibition against initiating simultaneous criminal proceedings and disciplinary proceedings was again considered by a two Judge Bench of the Supreme Court in State Bank of India and Others Vs. R.B.Sharma, (2004) 7 SCC 27 wherein the Supreme Court observed as follows:

> "Para- 8: The purpose of departmental enquiry and of prosecution are tow different and distinct aspects. Criminal prosecution is launched for an offence for violation of a duty the offender owes to the society, or for breach of which law has provided that the offender shall make satisfaction to the public. So crime is an act of commission in violation of law or of omission of public duty. The departmental enquiry is to maintain discipline in the service and efficiency of public service. It would, therefore, be expedient that the disciplinary proceedings are conducted and completed as expeditiously as possible. It is not, therefore, desirable to lay down any guidelines as inflexible rules in which the departmental proceedings may or may not be stayed pending trial in criminal case against the delinquent officer. Each case requires to be considered in the backdrop of its own facts and circumstances. There would be no bar to proceed simultaneously with departmental enquiry and trial of a criminal case unless the charge in the criminal trial is of grave nature involving complicated questions of fact and law. Offence generally implies infringement of public duty, as distinguished from mere private rights punishable under criminal law. When trial for criminal offence is conducted it should be in accordance with proof of the offence as per the evidence defined under the provisions of the Indian Evidence Act, 1872 (in short "the Evidence Act"). Converse is the case of departmental enquiry. The enquiry in a departmental proceeding relates to conduct or breach of duty of the delinquent officer, to punish him for his misconduct defined under the relevant statutory rules of law. That the strict standard of proof or applicability of the Evidence Act stands excluded is a settled legal position. Under these circumstances, what is required to be seen is whether the departmental enquiry would seriously prejudice the delinquent in his defence at the trial in a criminal case. It is always a question of fact to be considered in each case depending on its own facts and circumstances" (emphasis supplied).

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13. It is thus fairly settled law that on basic principles proceedings in a criminal case and a departmental proceedings can go on simultaneously, except in some cases where departmental proceedings and criminal case are based on the same set of facts and the evidence in both the proceedings are same. It is in these cases the Court has to decide taking into account special features of the case whether simultaneous continuance of both would be proper. There can be no straight jacket formula as to in which case the departmental proceedings have to be stayed, and the Court will have to decide in the given circumstances of a particular case as to whether disciplinary proceedings should be interdicted, pending criminal trial.

14. In the instant case, there is no dispute that the criminal action and the disciplinary proceedings are founded upon the same set of facts. In fact, the disciplinary proceedings are solely based upon the criminal complaint lodged by the president of a rival union, who is also facing prosecution with regard to the same incident. It has been conceded before us that the bank had not conducted any independent enquiry before initiating the impugned departmental proceedings.

15. In our opinion, in the peculiar facts and circumstances of the case on hand, fair play requires the postponing of the departmental proceedings till the criminal cases are decided. We are, therefore, of the view that the prayer made by the petitioners for deferring the departmental proceedings till the conclusion of the criminal trial has to be accepted and it is ordered accordingly.

16. With the above observations, the writ appeals and the writ petitions are disposed of. However, there will be no order as to costs. Consequently, connected miscellaneous petitions are closed.

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Sd/
Asst.Registrar

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Sub Asst.Registrar

To

The Deputy General Manager, Indian Overseas Bank,
Inquiry Cell, Industrial Relations Department,
No.763, Anna Salai, Chennai - 600 002.

+ 4 ccs to M/s.Aiyar and Dolia SR No.4031
+ 8 ccs to Mr.P.Chandrasekaran, SR No.4219 to 4226
+ 1 cc to Mr.C.R. Chandrasekaran, SR No.3916

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SR/15.2.2006

W.A.Nos.11 to 13 & 73 of 2006
and
W.P.Nos.26176 to 26179 of 2005

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